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IN THE SUPREME COURT OF IOWA

IN RE THE MARRIAGE OF JODI LYNN ERPELDING AND TIMOTHY JOHN ERPELDING

Upon the Petition of JODI LYNN ERPELDING, Petitioner-Appellant/Cross-Appellee, And Concerning TIMOTHY JOHN ERPELDING, Respondent-Appellee/Cross-Appellant.	SUPREME COURT NO. 16-1419 Kossuth County No. CDCD002446

APPEAL FROM THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY
THE HONORABLE PATRICK M. CARR

APPELLEE/CROSS-APPELLANT'S REPLY BRIEF AND ARGUMENT

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ARGUMENT

I. TIM PERSERVED ERROR REGARDING HIS REQUEST FOR PRIMARY CARE AND OBJECTIONS TO THE GUARDIAN AD LITEM REPORT

Throughout Jodi's reply/cross-appellee brief, she makes a continuous representation that Tim failed to preserve error regarding Tim's complaints of the Guardian Ad Litem report and his request for primary physical care. (Appellant Reply Brief P. 18, 19, 20, 21, 22, 25). As with many items in Jodi's reply brief, this is a grave misrepresentation of the underlying record. While it is certainly undisputed that Tim initially agreed to a temporary custodial arrangement of split care, when it came to permanent custody, Tim has always sought primary physical care of both boys. (APP-686, Exhibit 301; APP-404-405, Tr. 907-908; SUPP APP-014, Respondent's Post-Trial Brief; SUPP APP-050, Respondents Reply Post-Trial Brief). In fact, in the parties' pretrial stipulation, Tim asserted that he was seeking primary physical care of the boys and his desire to keep the boys enrolled in the Bishop Garrigan school system. (APP-047, Pretrial Stipulation). Additionally, the district court explicitly stated that the issue before the Court was a determination of whether to award primary physical care to one parent, or have a split custodial arrangement. (APP-097, Decree P. 16). In fact, the district court correctly stated Tim's position as follows:

> For his part, the Respondent mostly refrained from negative

> comments about the character or parenting capacities of the Petitioner. His position at trial was straightforward. He acknowledges the Petitioner to be a competent and loving mother who is well bonded to each of the parties' two sons. He simply contends that he is better positioned, now, to continue to rear the parties' children to reach their full potential as happy and functioning adults. He points to his extended family support system, and to Ellen and Jim Gatton. He points to the long history of association with his family in the Algona community in general and in the local Catholic church and school in particular. His position is that the boys should continue to live with him on the farm, enjoying the many benefits of farm life, the continued association of their historic friends, and the benefits of a local Catholic education.

(APP-088, Decree P. 7). Tim can hardly state his position any better. Thus, it cannot and should not be disputed that Tim preserved error on his request for primary physical care of both boys.

Jodi also asserts that Tim waived any objections to the Guardian Ad Litem Report. This is again, a blatant misrepresentation of the record. At the time of the trial the Guardian Ad Litem had not yet filed his report and recommendations. Instead he filed his report on March 2, 2016. (APP-062, GAL Report). Prior to that time, Tim had no knowledge as to what the recommendation would be and had no ability to object earlier. Further, Tim ultimately did object to his report in his post-trial brief. (SUP APP-014, Respondent's Post-Trial Brief).

Finally, Jodi seems to argue that because Tim filed a Cross-Appeal, rather than filing his notice of appeal before hers, that his request is "more about control

and child support than seeking the best interests for the children." (Appellant Reply Brief p. 19). This position is so outlandish it is difficult to respond fully. First, Tim's Notice of Appeal was timely. Iowa R. App. P. 6.101 (APP-137, Notice of Cross-Appeal). Thus, there is no reason or rationale for Jodi's conjecture and there is nothing in the record to substantiate this assertion. Second, and more importantly, Tim has always sought and requested primary physical care of the boys. At trial Tim asserted that he believed the boys should be placed in his care as he has the ability to offer the most stability. (APP-404-405, Tr. 907-908). Tim asserted he wanted primary care in his post-trial briefings. (SUPP APP-014, Respondent's Post-Trial Brief; SUPP APP-050, Respondents Reply Post-Trial Brief). The district court further recognized that a decision was to be made regarding an award of primary physical care. (APP-097, Decree P. 16). Now on appeal, Tim is taking the same position and is asking this Court to correct the errors of the district court. Under Jodi's position, Tim would be punished merely because she beat him to the courthouse steps to file her appeal first. This type of assertion (with no evidence to support) is wholly improper. Without question, Tim fully preserved error on his request for this Court to award primary physical care of both children to Tim.

II. THE DISTRICT COURT ERRED IN NOT AWARDING TIM PRIMARY PHYSICAL CARE OF BOTH CHILDREN

A. Jodi Repeatedly Attempts to Misrepresent the Record

Throughout the course of Jodi's reply brief she makes several references that at best are taking certain liberties with the record and at worst are misrepresentations of the record before the district court. For example, Jodi asserts that Ellen Gatton is dependent upon the children emotionally and Tim financially. (Appellant Reply Brief P. 24). Yet, Ellen Gatton's testimony was completely to the contrary. While it was certainly true that she shares an emotional bond with the boys, it was nothing more than enjoyment of watching W.E. and D.E. grow up and helping raise them. (APP-507-509, Tr. 1643-1645). She never testified that the relationship was improper or inappropriate in anyway. In fact, she explicitly stated that they were not acting as surrogate grandparents, but that they simply loved being around the Erpelding family. (APP-508-509, Tr. 1644-1645). It is also important to note that even though Jodi repeatedly criticized the involvement of the Gattons in these proceedings and referred to them as "hired help", she continued to list Mrs. Gatton as an emergency contact during D.E.'s enrollment in the Clear Lake school system. (APP-254, Tr. 199).

Further, in no way were the Gattons financially dependent upon the Erpeldings. In fact, Mrs. Gatton explicitly stated that "throughout all of this, I really

wouldn't have cared if I got paid at all." (APP-511, Tr. 1647). Indeed, while Jodi argues that the Erpeldings paid over $9,000 in child care to the Gattons, the record does not support such an assertion. In fact, since the time of the separation, Tim had never paid Mrs. Gatton for cleaning of the house or taking care of the children. (SUPP APP-105, Tr. 1651) ("Q. But since the separation, has Tim paid you to clean and take care of the boys? A. No. The—I will say, the gas—if there were times that we would go and get Derek or bring him back, Tim compensated for the gas."). Additionally, Jodi completely ignores that Tim's testimony was that he only paid Mrs. Gatton approximately $800 in 2015. (SUPP APP-080-081, Tr. 1096-1097). The remaining amount of Jodi's purported $9,000 in child care went to things like kids' activities. (SUPP APP-081, Tr. 1097).

Jodi also repeatedly made reference to Tim having third-parties meddle in the divorce proceedings. (Appellant Reply Brief P. 24, 25). However, this is simply not the case. In particular, Sarah Enke (Jodi's paramour's former spouse) was called—under subpoena—to provide particular details about an incident in which Jodi caused a public scene regarding Tim's visitation with D.E. (APP-429-430, Tr. 1204-1205; APP-425-427, Tr. 1189-1191). Additionally, due to Jodi's evasive testimony regarding her paramour, Mrs. Enke was also able to provide key details regarding Jason Enke's propensity for violence and the protective order in place. (SUPP APP-085, Tr. 1197; APP-437-438, Tr.1212-1213; APP-440-441, Tr. 1216-

1217). *See generally*, *In re Marriage of Malloy*, 687 N.W.2d 110, 113 (Iowa App. 2004) (recognizing that a parent's significant other "becomes a significant factor in a custody dispute."). Indeed the district court even recognized that Jodi's relationship with Mr. Enke was a negative factor against Jodi. (APP-099, Decree P. 18).

Jodi also accuses Tim of having "a female friend, Marie Berke." (Appellant Reply Brief P. 27). However, the record establishes nothing more than Ms. Berke being a friend of Tim's from high school that he has spent time with socially. (APP-419, Tr. 1122; APP-421, Tr. 1174). In fact, Jodi conveniently forgets to mention that Ms. Berke and Tim are not in any sort of a relationship. (APP-421, Tr. 1174). Instead they have simply known each other since approximately 1977 and have no relationship status whatsoever. (APP-421, Tr. 1174).

Jodi also makes passing reference to a roommate Tim had living with him for a brief amount of time. (Appellant Reply Brief P. 27). Yet, Jodi fails to inform this Court of exactly what transpired. For a short time after Tim and Jodi's initial separation, Tim allowed his former farm hand, Kevin Cram, to live in his home. Mr. Cram had been around the boys for a number of years prior to the parties' separation and would often play with the boys. (SUPP APP-089-090, Tr. 1365-1366). Officer Cram eventually completed his education and was hired as a fulltime Algona police officer, but he needed some temporary living arrangements. (SUPP APP-092-093,

Tr. 1369-1370; SUPP APP-070-071, Tr. 704-705). After speaking with his counselor first, Tim ultimately agreed to allow Officer Cram to move in with him. (SUPP APP-092-093, Tr. 1369-1370). On one night during the entire time they were living together, Officer Cram allowed his girlfriend (and future fiancé) to stay the night. (SUPP APP-094-095, Tr. 1373-1374). The boys never saw Officer Cram or his girlfriend together that night. (SUPP APP-094-095, Tr. 1373-1374). After the incident occurred, Tim asked Officer Cram to refrain from having her stay the night again and Officer Cram agreed. (SUPP APP-095-096, Tr. 1374-1375). This is the full extent of the trial testimony regarding the incident.

B. The Split Care Arrangement is not in the Best Interests of the Children

On several occasions, Jodi argues that "[t]he boys are fine." (Appellant Reply Brief P. 5, 6, 20, 25). It appears that Jodi may be attempting to present new evidence to this Court about the boys. If that is the case, these arguments are wholly improper. It is well settled, hornbook law that an appeal must be decided entirely on the record before the district court and not any newly presented evidence. *Sowdon & Co. v. Craig*, 21 Iowa 580 (Iowa 1866) ("This court reviews the action and decisions of the District Court, and the record must show that we have the case before us which the court decided; otherwise, we are or may be deciding a different case from that decided by the court whose judgment we are reviewing."). Indeed, the Iowa Rules of Appellate Procedure, specifically state that the record on appeal is only the items

and transcripts presented before the district court. Iowa R. App. P. 6.801. Thus, to the extent Jodi is attempting to present new evidence, this argument should not be considered by this Court. Additionally, and more importantly, the record is replete with evidence to the contrary.

Tim provided ample evidence that the split care arrangement was not working at the time of the trial. It is undisputed that W.E. and D.E. are close to each other and share a typical brother relationship. (APP-358-359, Tr. 635-636). Yet, under the current arrangement, they are scheduled to spend every weekend together and one night a week. (APP-119-120, Decree P. 38-39). This arrangement is similar to what was occurring in the months leading up to the trial. (APP-686, Exhibit 301). In this time of split physical care, Tim observed that the boys were really not spending much time together during the scheduled weekday visits. (APP-397-403 , Tr. 896-905). Instead, they are like two ships passing in the night and only sleeping in the same house together. (APP-397-399, 896-900). This arrangement has been particular hard on the younger D.E. He is having to spend much more time on the road and it is affecting his sleep schedule. (SUPP APP-077, Tr. P. 902).

C. Tim Provides the Necessary Continuity and Stability that is in the Best Interests of the Children

Jodi does not, and cannot assert that she provides more stability to the boys. This is because the ***entire*** Erpelding support system is surrounding Tim and the family farm. This includes the boy's Aunts, Uncles, school system, teachers, friends

and the Gattons. (APP-484-485, Tr. 1570-1571; APP-457-458, Tr. 1326-1330; APP-410-411, Tr. 914-915). All of which have routinely provided support and stability in the lives of both D.E. and W.E. in the past and will gladly continue to provide support in the future. (APP-484-485, Tr. 1570-1571; APP-457-458, Tr. 1326-1330; APP-410-411, Tr. 914-915).

Further, if this Court should return D.E. to the family farm, D.E. will move into the home he grew up in and re-enroll in the Bishop Garrigan School System. (APP-473-475, Tr. 1402-1404; APP-477-478, Tr. 1425-1426). This is something clearly of interest to D.E. as he has expressed interest in returning to high school in the Bishop Garrigan School System. (APP-080, GAL P. 19; APP-406-408, Tr. P. 909-911). Should this Court return D.E. to Tim, in addition to being reunited with his brother, he will also be reunited with his friends. (APP-406-408, Tr. 909-911; APP-392-393, Tr. 879-880). This is something his previous teachers stated would not be a problem at all despite his extended absence. (APP-473-474, Tr. 1402-1404; APP-477-478, Tr. 1425-1426).

On the other hand, other than Jodi's mere presence, she provides no stability or continuity to D.E. With Jodi, D.E. is living in a new city and enrolled in a new school district. Prior to D.E. starting school at Clear Lake, he attended a doctor's appointment about his stomach issues. (SUPP APP-075, Tr. 891). At that time, Jodi thought having D.E. in the front seat of the truck was making him nauseous. (SUPP

APP-075, Tr. 891). D.E.'s doctor actually said that riding in the front seat was better for him. (SUPP APP-075-076, Tr. 891-892). At this appointment school and D.E.'s friends were discussed. (SUPP APP-076, Tr. 892). D.E. was asked if he had any friends in Clear Lake and he responded that he only had two (2) friends. (SUPP APP-076, Tr. 892). One of the friends was Mr. Enke's son and the other was a boy that he had met the night before at football. (SUPP APP-076, Tr. 892). He was not able to name or identify any other friends. (SUPP APP-076, Tr. 892)

Additionally, despite Jodi's assertion to the contrary, she does not have a support system in place in Clear Lake. (Appellant's Reply P. 6). She has no immediate family in the area. (APP-244-247, Tr. 178-181). The only family she does have, lives in Algona where Tim and his family also reside. (APP-247, Tr. 181). This is further exemplified by the fact that she does not have anybody to watch or take care of D.E. when he returns from school. (APP-339, Tr. 481). Instead, she allows him to come home by himself until she returns nearly an hour later. (APP-339, Tr. 481).

Shortly after the parties agreed to separate, Jodi and Tim drafted an informal agreement. (APP-592, Exhibit 21; APP-228, Tr. 150; SUPP APP-082-083, Tr. 1110-1111). As part of that agreement, the parties essentially agreed to a shared physical care arrangement. (APP-592, Exhibit 21). Important to these proceedings

are the terms regarding schooling. In particular, the parties' agreement states as follows:

> It is the intent that the children will remain in the Algona Community School District and attend Bishop Garrigan which is their current school.
> Tim will agree to pay the tuition for the children to attend Bishop Garrigan until the graduate.
> In the event the parents cannot agree to the selection of a school, said child shall attend the local public school.

(APP-592, Exhibit 21). As can be seen from this informal agreement, Jodi essentially was in agreement of not only the importance of keeping the boys together, but the importance of keeping them in the Bishop Garrigan school district. (APP-592, Exhibit 21).

Jodi tries to downplay Tim's stability by implying Tim's family farm is somehow in jeopardy due to an inner family dispute. (Appellant Reply Brief P. 6, 27). In fact she even goes so far to assert that the family farm "will be put up for auction in the near future." (Appellant Reply Brief P. 6). Yet, the transcript never mention the word auction and actually state the exact opposite. The actual testimony was as follows:

> Q. The – There's litigation pending between you and Ann now?
> A. Correct.
> Q. Is that what's called a partition action?
> A. Correct.
> Q. In that action, is it your understanding that we ultimately will be asking the Court to set a value on that; and then you would buy out, at the set price, your share of the homeplace?

> …
> Is it your understanding that the purpose of the partition action is to have a price established for Ann's share and that you be granted the opportunity to then buy the fractional share at that price?
> A. Correct

(APP-372, Tr. 725). As can be seen, there is absolutely no mention of auction or any threats of Tim losing the family farm. Instead, it is another example of Jodi making great exaggerations with the record before the district court.

Similarly, Jodi accuses Tim of being an "absentee" father and that she did ninety percent (90%) of the parenting duties. (Appellant Reply Brief P. 23). Again, this is not supported in the record. First, Jodi does not dispute that during the course of the marriage, she left every morning for work before the boys were awake. (APP-263, Tr. 215). Each morning, Mrs. Gatton would come and get the boys ready for school. (APP-263, Tr. 215; APP-505-506, Tr. 1640-1641). It's difficult to understand how Jodi could handle "ninety percent" of the parenting duties, when she was not even the one getting the kids ready for school in the mornings.

Jodi also ignores that Tim would regularly have lunch with the kids when they were at the Gattons during the day. (APP-507, Tr. 1643). She also fails to recognize that Tim is continually involved with the boys' activities. Whether it be leaving the fields early to attend various extracurricular activities, going on hunting excursions, or regularly taking the children to

church. (APP-412-414, Tr. 918-920; SUPP APP-088-089, Tr. 1364-1365). All of which clearly establish that Tim is far from being an "absentee" father.

While Jodi is quick to point out the district court's findings painting her in a favorable light, she ignores that the district court found Tim to be equally favorable, if not more so. In describing Tim, the district court stated as follows:

> The Respondent is, according to all witnesses, industrious and hard-working, the Petitioner would say, to a fault. There may be some truth that following the parties' separation he has become more involved in the boys' lives than he was previously, but the Court thinks that this aspect of the evidence is overstated. As we learned from the authority mentioned above, custody orders are not entered to reward or punish past behavior. We take the children as we find them today and seek to make the best current placement, today, which will be in their long-range best interest. The court would observe it was especially impressed with the methods of guidance the Respondent employs with the children. He seems able to overlook minor bumps in the road, trying to guide as much by example and inaction as forcible intervention. The Court thought he showed especially keen insight into some of the behaviors he has seen in the boys, and his methods of addressing them.

(APP-097-098, Decree P. 17-18). On the other hand, the district court recognized that at times Jodi "has some tendency to be direct and at times obstinate." (APP-097, Decree P. 17; SUPP APP-106-107, Tr. 1652-1653; SUPP APP-090-091, Tr. 1366-1367). A point that Jodi clearly omits.

Finally, Jodi points to Tim's prior charge of vehicular homicide as a reason to call into question his abilities as a parent, but again this is nothing more than an

attempt to misdirect the Court without providing all of the surround facts. (Appellant Reply Brief P. 25). Approximately twenty-seven (27) years ago, Tim was involved in a serious motor vehicle accident that involved alcohol. (APP-446, Tr. P. 1228; SUPP APP-064, Tr. 690). It was a single car accident where both Tim and his girlfriend were thrown from Tim's pickup truck. (SUPP APP-065, Tr. 691). Tim was in a coma for several days and suffered severe blunt head trauma that required extensive therapy. (SUPP APP-066-067, Tr. 692-693). Tim was ultimately charged with vehicular homicide, a class B Felony. (SUPP APP-065, Tr. 691). Tim disputed that he was driving the vehicle and pled guilty (via an *Alford* plea) to an aggravated misdemeanor and did a twenty-one (21) day shock prison sentence. (SUPP APP-065, Tr. 691). Following this incident, Tim drastically changed his drinking habits and is vehemently against anyone drinking and driving. (SUPP APP-068-069, Tr. 696-697).

Today, Tim rarely drinks any alcohol. He does not keep alcohol in his home. (SUPP APP-070, Tr. 704). While he admitted to being drunk at a trip to Mexico with Jodi in 2006, no evidence was presented to establish that he was ever drunk in front of the boys. (SUPP APP-072, Tr. 815). The district court accurately described the record as follows: "[Tim] and all witnesses who testified, except [Jodi], see him as a very moderate consumer of alcohol at the present time." (APP-087, Decree P. 6). In fact, Officer Cram testified that when he was regularly spending time with Tim,

he never saw him drink more than a half of a beer at the house and only recalled one incident where Tim had two drinks. (SUPP APP-096-098, Tr. 1375-1377; SUPP APP-099, Tr. 1380). Simply put, the record does not support Jodi's contention that Tim has a history of alcohol abuse or that it in anyway affects his ability to raise the boys in a safe and healthy environment.

D. Jodi cannot argue for primary physical care of both boys

As an alternative argument, Jodi asks this Court to award Jodi primary physical care of both boys to her. (Appellant Reply Brief P. 22). Tim stands by his position that he offers the ability to provide superior care to the boys and can provide more stability. Additionally, however, Tim maintains that Jodi did not preserve her argument for review by this Court. First, at the time of filing her post-trial briefing, she did not seek primary care of W.E. (SUPP APP-001, Petitioner's post-trial brief). In fact, she explicitly stated that she was requesting the district court adopt the Guardian Ad Litem's recommendation of split physical care. (SUPP APP-001, Petitioner's post-trial brief). Finally, in her original notice of appeal to initiate these proceedings, while not required to do so under the rules, explicitly stated that she was not appealing the custody determination. (APP-133, Notice of Appeal). Instead, she only appealed the issues regarding her personal financial status and

payments. (APP-133, Notice of Appeal). Thus, error was not preserved for her newly sought alternative argument.

Further, in Jodi's opening Appellant Brief, she did not raise the issue of primary care. This was despite her attempt to file an improper notice of cross-cross appeal. In fact, in response to Jodi's improper filing, this Court specifically informed Jodi to raise all issues she wishes to raise within her proof brief. Her failing to request a reversal of the split physical care in her opening briefing waived her ability to make this argument for the first time in her reply brief. Iowa R. APP. P. 6.903; *see also, Young v. Gregg*, 480 N.W.2d 75, 78 (Iowa 1992) ("However, we have long held that an issue cannot be asserted for the first time in a reply brief."); *Bartels v. Hennessey Bros.*, 164 N.W.2d 87, 92 (Iowa 1969) ("The record also discloses that defendant-appellee neither appealed nor cross-appealed, and resultantly can have no greater relief or redress here than was accorded it by the trial court." (citations omitted).

E. This Court should remand for proper calculation of child support obligations

In Tim's opening Appellee/Cross-Appellant brief, he sought as part of his requested relief a remand for proper calculation of child support obligations. (Appellee Brief P. 17 n 2., 52, 53). While Tim certainly disputed the district court's finding of Tim's income to be $125,000, he does not contest that determination on

Appeal. (APP-115, Decree P. 34). However, as mentioned in Tim's opening brief, when the district court performed the child support obligations, it appears the district court used an income of $150,000. (Appellee Brief P. 17 n. 2). Thus, Tim sought remand for a proper determination of his child support obligations using the proper calculations should the Court deny his request to award him primary care. (Appellee Brief P. 53). Additionally, should this Court award Tim primary physical care of both boys, this Court should remand to the district court for a proper determination of Jodi's child support obligations, using Tim's income of $125,000. (Appellee Brief P. 52-53).

Jodi repeatedly request that this Court find that Tim's salary be considered $206,225 per year "from government rental payments." (Appellant Reply Brief P. 12, 13, 14). This request fits directly into Jodi's continued misrepresentations of the record. The record simply does not establish an income of $206,225. First, her own expert did not calculate Tim's income at that amount, and instead determined an average income of $150,000 for child support purposes. (APP-304-307, Tr. 271-274; APP-632, Exhibit 55). Apparently, Jodi arrives at this phantom $206,225 number from the testimony of Dr. Michael McNeill who in addition to owning the neighboring farm to Tim also runs an agricultural consulting firm. (SUPP APP-059-061, Tr. 388-390). Dr. McNeill's testimony cited by Jodi to support the $206,225 income calculation was as follows:

> Q. Are you aware of a Conservation Reserve Program or some sort of FSA program here in Kossuth County where the government is paying $400 an acre for 15 years for decent ground?
> A. I have not heard quite the 400, but I have heard in the high 300s
> Q. And what---what's the numbers you have heard?
> A. I know of a 365.
> …
> Q. Okay. And what type of a program was that?
> A. That was---They have two programs ongoing. One is now closed because they have consumed all of the funds available for it. There's another one that is open that is more of a---a wildlife preserve program that requires a little more action on the landowner's part. He has to mow and take care of it and develop it more for wildlife.
> Q. And what does that pay?
> A. They're roughly about the same.
> Q. Three sixty-five?
> A. In that range, yes. It's based on soil quality and soil type.
> Q. Well, some of these, they will actually take good ground, won't they?
> A. Oh, yes. They will take the whole farm.
> Q. Like the Erpeldings'?
> A. They would take any farm here in Kossuth County.
> Q. And pay 365 an acre?
> A. Based on---Based on the soil types. Some soils will pay higher and some lower. And they have a---a way of calculating that based on a number of acres of each soil type that you have.

(APP-327-328, Tr. 405-406). As can be seen, nothing in this exchange stands for the position that the Erpelding Family farm would qualify for these programs or that they would qualify for the $365 an acre amount, Jodi is advocating. Interestingly, Jodi does not appear to request a recalculation of child support based on this $206,255, but instead appears to only request it in the alimony calculations. This

points to Jodi's true motives (greed) rather than trying to actively seek the best environments for the children. Based on the foregoing, this Court should remand to the district court for a proper child support calculation based upon Tim's imputed income of $125,000.

CONCLUSION

Tim requests this Court reverse the district court's split physical care award between the parties. This Court should find that both W.E. and D.E. should be placed in Tim's care and award him primary physical care of both boys. This Court should further remand this matter to the district court for a determination of child support to be awarded to Tim based upon Tim's imputed income of $125,000. Alternatively, should this Court deny Tim's request of primary physical care of the boys, this Court should remand the case for a proper calculation of Tim's child support calculations based upon his imputed income of $125,000.

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ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Proof Reply Brief and Argument was $0.00, as it was electronically filed.

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Dated: December 14, 2016

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING

I certify on December 14, 2016, I will serve this brief on the Appellant's Attorney, Thomas W. Lipps, by electronically filing it.

I further certify that on December 14, 2016, I will electronically file this document with the Clerk of the Iowa Supreme Court.

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